

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 332 of 2000

in

SPECIAL CIVIL APPLICATION No 2879 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed :
to see the judgements?
2. To be referred to the Reporter or not? :
3. Whether Their Lordships wish to see the fair copy :
of the judgement?
4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? :

A K YADAV

Versus

OIL & NATURAL GAS CORPORATION LIMITED

MR TS NANAVATI for Appellant.

MR MIHIR J.THAKORE with MR AJAY R MEHTA for Respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE J.M.PANCHAL

Date of decision: 01/08/2000

C.A.V.JUDGMENT : (Per : Panchal, J.)

The appellant has assailed judgment dated July 4, 2000, rendered by the learned Single Judge, in Special Civil Application No.2879/2000, by which challenge to order dated April 6, 2000 transferring him from Ankleshwar to IPSEM, Goa, is negatived.

2. Initially the appellant joined Oil & Natural Gas Corporation Ltd. ('O.N.G.C.' for short) as Technical Assistant Gr.I and in due course, was promoted to the post of Chief Engineer. He was posted as Chief Engineer at Ankleshwar in the year 1991. When he was serving at Ankleshwar, he and others were prosecuted for the offences punishable under sections 379, 511, 114 read with section 120-B of the Indian Penal Code, and was placed under suspension by order dated December 31, 1996. The Directorate of Personnel, Tel Bhavan, Dehradun, O.N.G.C. by an order dated May 12, 1997 effected transfer of the appellant and other four officers. The appellant was transferred from Ankleshwar to IPSEM, Goa. However, on realizing that the appellant was placed under suspension, order dated May 12, 1997 transferring him to IPSEM, Goa was kept in abeyance till May 1998 by an order dated November 26, 1997. The appellant came to be acquitted in criminal case vide judgment dated March 16, 2000. Therefore, the respondents by order dated April 6, 2000 revived the order dated May 12, 1997 by which he was transferred to Goa. By the said order, the appellant was ordered to be relieved on April 11, 2000 to join duty at Goa. The appellant challenged validity of the said order in Special Civil Application No. 2879/2000, which has been rejected by the learned Single Judge by the impugned judgment, giving rise to the present appeal.

3. We have heard the learned counsel for the appellant as well as Mr. Mihir J.Thakore, learned Senior Advocate appearing for Mr. A.R.Mehta and taken into consideration the averments made in the petition, reply-affidavit, affidavit-in-rejoinder as well as documents forming part of the petition.

4. The contention that transfer is not for any administrative exigencies and is made malafide with a view to thwarting investigation ordered against the investigating officer by the learned Magistrate while

acquitting the appellant, is devoid of merits. The order dated May 12, 1997, which is produced at Annexure-B, indicates that along with the appellant, four other officers were also transferred to different places by the Directorate of Personnel, Tel Bhavan, Dehradun. It may be mentioned that no allegations of malafides are levelled against the Directorate of Personnel. Moreover, the said order indicates that the appellant was not transferred because he was involved in a criminal case, but transfer order was passed in routine course. On realizing that the appellant was placed under suspension with reference to criminal case, implementation of order dated May 12, 1997 transferring the appellant to Goa was kept in abeyance and after his acquittal in criminal case, again the said order is revived. Revival of transfer order would not indicate any malafides on the part of the respondents. Again, the fact that neither the order transferring the appellant to Goa, nor the order by which order of transfer was kept in abeyance, was served on the appellant, would not make revival of the transfer order either malafide or illegal in any manner. It is relevant to notice that the prosecution against the appellant and others was not launched at the instance of O.N.G.C. or its officers. It is true that while acquitting the appellant the learned Magistrate has directed the D.S.P. Vadodara to make inquiry against the investigating officer for false implication of the appellant in criminal case. However, it would not be correct to jump to the conclusion that in order to thwart the inquiry, transfer order dated May 12, 1997 is revived. The order dated May 12, 1997 indicates that the appellant was transferred from Ankleshwar to Goa and in his place, no one was posted. It also does not indicate that the appellant was transferred to Goa vice another officer. Therefore, it is wrong to contend that as post at Goa was kept vacant from November 26, 1997 till passing of the order dated April 6, 2000, the transfer becomes malafide. As observed earlier, order dated May 12, 1997 is a common order transferring five officers of E.6 and E.5 Level and is not an order passed transferring the appellant only. The said order was issued by the Headquarter of the respondents-Corporation. Under the circumstances, it is difficult to uphold the contention that the order of transfer having been passed malafide, it ought to have been quashed by the learned Single Judge.

The plea that as the respondents failed to obey and respect the order passed by the High Court in Special Civil Application No. 2879/2000 on April 11, 2000, relief claimed in the petition ought to have been granted cannot be accepted. It is true that by an order dated

April 11, 2000 the learned Single Judge had stayed operation of order dated April 6, 2000 till April 26, 2000. However, subsequent order dated May 1, 2000 passed by the learned Single Judge in the petition indicates that it was pointed out to the learned Single Judge that before the order of the Court could be communicated to the respondents on April 13, 2000, order dated April 6, 2000 was implemented and, therefore, the Court had directed the parties to maintain status-quo as on May 1, 2000. It may be noted that in view of the order dated April 11, 2000 passed by the High Court by which operation of transfer order dated April 6, 2000 was stayed, the respondents had passed an order dated June 1, 2000 keeping in abeyance the transfer of the appellant. However, after passing of the order dated May 1, 2000 by which the parties were directed to maintain status-quo, order dated June 1, 2000 keeping in abeyance transfer of the appellant, was withdrawn with immediate effect by another order dated June 16, 2000. In view of the facts which have been noted above, it is difficult to agree with the submission made by the learned counsel for the appellant that transfer order being contrary to order dated April 11, 2000 which was passed by the High Court, is liable to be set aside.

The contention that suspension and transfer could not have been resorted to simultaneously, has no factual basis. As noticed earlier, the appellant was suspended from service on December 31, 1996, as he was involved in a criminal case. The order dated May 12, 1997 transferring the appellant and four other employees does not indicate that the appellant was transferred because he was involved in a criminal case. As we are inclined to accept the stand of the respondents that a common order transferring five officers was passed on May 12, 1997 in routine course, the submission that simultaneous suspension and transfer is bad in law, cannot be accepted.

5. It is well settled by catena of decisions of the Supreme Court that transfer is an incidence of service and is not liable to be set aside, unless it is contrary to statutory provisions or is actuated by malafide. The appellant has failed to establish that his transfer to Goa is contrary to statutory rules or malafide in any manner. The appellant was serving at Ankleshwar since 1991 and, therefore, order transferring him from Ankleshwar to Goa cannot be termed as unusual or arbitrary. The learned Single Judge while dismissing the petition has assigned cogent reasons for not interfering with the transfer order and we do not find any

justification to interfere with the same in the present appeal. The appeal is, therefore, liable to be dismissed.

For the foregoing reasons, the appeal fails and is summarily dismissed.

(D.M.Dharmadhikari,C.J.)

(J.M.Panchal, J.)

(patel)